

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas  
The Honorable William P. Keesley, Circuit Court Judge

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Appellate Case No. 2023-000442

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Mark Gregory Thompson and Jane Page Thompson,  
individually and on behalf of all those similarly situated, Appellants,

v.

Clay Killian, in his official capacity as Aiken County  
Administrator, Jason Goings, in his official capacity as  
Treasurer of Aiken County, Aiken County Council, Aiken  
County, City of Aiken, Aiken Council, and Stuart  
Bedenbaugh, in his official capacity as City Manager of  
Aiken, Respondents.

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**Rule 204(b), SCACR, Petition to Transfer or Certify**

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Appellants respectfully request this Court to certify this case for immediate review. *See* Rule 204(b), SCACR. This appeal involves issues of significant public interest affecting citizens across the State of South Carolina. The South Carolina Supreme Court has already issued an order vesting the exclusive jurisdiction of all road maintenance fee cases relating to section 2(E) of Act No. 236 of the 2021-2022 Legislative Session with Honorable Circuit Court Judge Roger M. Young, Sr. *See* Exhibit 1 (Order signed May 17, 2023). The Supreme Court is already being asked to weigh in on Judge Young’s recent order in the Georgetown County road maintenance fee class action, *Richard A. Butts et al., v. Miriam Mace, et al.*, 2021-CP-22-00928, finding the retroactivity provision in Act 236 unconstitutional. The defendants in the Georgetown County

appeal are asking the Supreme Court to weigh in on these cases with respect to the retroactivity provision of Act 236. In addition, the Supreme Court will likely be asked to weigh in on this case regardless of the Court of Appeals' decision. The Supreme Court's intervention is necessary to provide a uniform resolution to these issues. Counsel for Respondent City of Aiken joins only Appellants' request for the Supreme Court to assume jurisdiction of this appeal but does not consent or agree to the characterization of Appellants' issues on appeal. *See* Exhibit 2 (Emails). For the following reasons, the Court should certify the case and assume jurisdiction of this appeal.

### STATEMENT OF THE CASE

In *Burns v. Greenville County Council*, 433 S.C. 583 (2021), the South Carolina Supreme Court struck down Greenville County's Road Maintenance Fee as unconstitutional. This class action lawsuit is one among many filed statewide challenging virtually identical road maintenance fees illegally charged to South Carolina citizens.<sup>1</sup> Specifically, this case challenges the decisions by Aiken County and the City of Aiken to charge, collect, and retain identical Road Maintenance Fees to the one invalidated by the South Carolina Supreme Court in *Burns*. Respondent Aiken County continues to collect and retain these fees, while Respondent City of Aiken has repealed its fee yet has refused to refund the monies owed to its citizens. Overall, local governments across this State continue to violate the law and are hoarding millions of dollars that belong to their citizens. This action and those related actions were filed as a result.

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<sup>1</sup> *Jane Calkins et al. v. Town of Hilton Head Island et al.*, C/A No. 2021-CP-07-01967 (Beaufort County); *Steven Biggs et al. v. Florence County et al.*, C/A No. 2021-CP-21-01560 (Florence County); *Richard A. Butts, et al v. Angela Christian et al.*, C/A No. 2021-CP-26-07309 (Horry County); *Vontisha Portee et al. v. Victor Carpenter et al.*, C/A No. 2021-CP-28-000873 (Kershaw County); *Carroll Brown et al v. Harold M. Young et al.*, C/A No. 2021-CP-38-01268 (Orangeburg County); *Martha Mitchell et al. v. Richland County et al.*, C/A No. 2021-CP-40-03410 (Richland County); *Anne H. Hargrove et al. v. Cole Alverson et al.*, C/A No. 2021-CP-42-03595 (Spartanburg County); *Candice Abrams et al. v. Cole Alverson et al.*, C/A No. 2021-CP-42-03736 (Spartanburg County).

## ARGUMENT

Transfer of this appeal to the South Carolina Supreme Court is appropriate because this action and those similar class actions pending statewide and listed in footnote one implicate issues of significant public interest. *See* Rule 204(b), SCACR. In addition, the South Carolina Supreme Court is already involved with these cases and will continue to be with the now pending Georgetown County Appeal. Ultimately, this case (and those related cases) depict the epitome of bad government. The effects of which are pervasive across our state. Respondents to this action and the defendants to the lower court actions are local governments which have taken advantage of their citizens by charging illegal road maintenance fees. These local governments, despite clear precedent in the *Burns* decision, have refused to refund to their citizens the illegally collected fees. This practice in Aiken County has been ongoing for decades. Aiken County has done nothing in light of the *Burns* decision. Instead, it continues to collect and keep these fees. The City of Aiken, however, repealed its road maintenance fee following the *Burns* decision in an implicit recognition of its own wrongdoing yet refuses to refund its citizens any of the monies illegally collected. The resolution of this appeal affects more than just the citizens of Aiken County and the City of Aiken. It affects citizens across the State of South Carolina who have paid these fees for decades.

Immediate review by the Supreme Court will promote judicial economy and efficiency given that these cases are pending across South Carolina, and because the Supreme Court in *Burns* has already declared that road maintenance fees virtually identical to those at issue here are illegal. The ongoing collection and retention of these fees by Respondents directly contravenes Supreme Court precedent. Given the likelihood that this case will ultimately be reviewed by the Supreme Court regardless of the Court of Appeals' decision, certification at this stage will expedite the

resolution process and reduce unnecessary litigation expenses for all parties involved. Transferring this appeal will not only conserve judicial resources but will provide clarity and resolution to these class actions pending across the state in one fell swoop and will not serve to de-clutter our Appellate Court dockets with piece-meal appeals sure to come in this action.

Further, Act 236 was signed into law on June 22, 2022, and expanded the law governing service or user fees in South Carolina. This Act included a provision allowing it to apply retroactively to service or user fees imposed after December 31, 1996. In the Georgetown County road maintenance fee class action, *Richard A. Butts et al., v. Miriam Mace, et al.*, 2021-CP-22-00928, the plaintiff moved for partial summary judgment seeking a declaratory judgment that the retroactivity language is unconstitutional. Judge Roger M. Young, Sr., granted the motion, finding the provision unconstitutional. On September 9, 2024, the defendants filed a notice of appeal to the South Carolina Supreme Court. Because that lower court opinion is already before the Supreme Court, the Supreme Court should accept the transfer of this appeal.

Appellants recognize that oral argument is not ordinarily granted when an appeal is taken before a final judgment. *See* Rule 15, SCACR. However, oral argument is within the Court's discretion, and Appellants respectfully request the opportunity to answer any questions the Court may have regarding the issues presented.

### **CONCLUSION**

For the foregoing reasons, Appellants respectfully request that this Court certify this case for immediate review by the South Carolina Supreme Court pursuant to Rule 204(b), SCACR. The issues at hand are of substantial public interest and involve important legal principles requiring prompt and definitive resolution by the state's highest court.

Respectfully submitted,

**RICHARDSON THOMAS, LLC**

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*Attorneys for Appellants and the Class*

Dated: September 16, 2024

# **EXHIBIT 1**

# The Supreme Court of South Carolina

Mark Gregory Thompson and Jane  
Page Thompson, individually and on  
behalf of all others similarly situated,

Plaintiffs,

vs.

Clay Killian, in his official capacity as  
Aiken County Administrator; Jason  
Goings, in his official capacity as  
Treasurer of Aiken County, Aiken  
County Council, et al.

Defendants.

Aiken County  
2021-CP-02-02323

Jane Calkins, individually and on  
behalf of all others similarly situated,

Plaintiffs,

vs.

Town of Hilton Head Island; Hilton  
Head Island Town Council; Eric  
Greenway, in his official capacity as  
Beaufort County Administrator; et al.

Defendants.

Beaufort County  
2021-CP-07-01967

Steven Biggs, on behalf of himself and  
others similarly situated,

Plaintiffs,

vs.

Florence County, South Carolina;  
Florence County Council; K.G. Smith,

Jr. in his official capacity as Florence  
County Administrator, et al.

Defendants.

Florence County  
2021-CP-21-01560

Richard A. Butts, individually and on  
behalf of all others similarly situated,

Plaintiffs

vs.

Angela Christian, in her official  
capacity as Georgetown County  
Administrator; Miriam Mace, in her  
official capacity as Treasurer of  
Georgetown County; Georgetown  
County Council; et al.

Defendants.

Georgetown County  
2021-CP-22-00928

Baylis Griffin Hyman, individually and  
on behalf of all others similarly  
situated,

Plaintiffs,

vs.

Steve Gosnell, in his official capacity  
as Horry County Administrator, Angie  
Jones, in her official capacity as  
Treasurer of Horry County, Horry  
County Council, et al.

Defendants.

Horry County  
2021-CP-26-07309

Vontisha Portee, individually and on  
behalf of all others similarly situated,

Plaintiffs,

vs.

Victor Carpenter, in his official capacity as Kershaw County Administrator; Jill Catoe, in her official capacity as Kershaw County Treasurer, Kershaw County, et al.

Defendants.

Kershaw County  
2021-CP-28-000873

Carroll Brown, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

Harold M. Young, in his official capacity as Orangeburg County Administrator; Matt Stokes, in his official capacity as Orangeburg County Treasurer; Orangeburg County; et al.

Defendants.

Orangeburg County  
2021-CP-38-01268

Martha Mitchell and Philip Washington Falrey, IV, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

Richland County, South Carolina and Richland County Council,

Defendants.

Richland County  
2021-CP-40-03410

Anne H. Hargrove, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

Cole Alverson, in his official capacity as Spartanburg County Administrator; Oren L. Brady, III, in his official capacity as Treasurer of Spartanburg County; Spartanburg County Council; et al.

Defendants.

Spartanburg County  
2021-CP-42-03595

Candice Abrams, individually and on behalf of all those similarly situated,

Plaintiffs,

vs.

Cole Alverson, in his official capacity as Spartanburg County Administrator; Oren Brady, in his official capacity as Spartanburg County Treasurer; Spartanburg County; et al.

Defendants.

Spartanburg County  
2021-CP-42-03736

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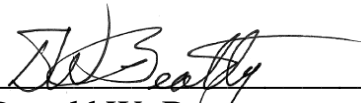
**O R D E R**

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I find that assigning a single judge to dispose of all cases that may arise out of the retroactivity provision in section 2(E) of Act No. 236 of the 2021-2022 South Carolina Legislative Session (hereinafter “Act No. 236”) will promote the effective and expeditious disposition of this litigation by uniform rulings and will

conserve the resources of the parties, their counsel, and the judiciary. Now therefore,

IT IS ORDERED that the Honorable Roger M. Young, Sr. be vested with exclusive jurisdiction to hear and dispose of the above cases, as well as any additional cases, which have been or may be filed in South Carolina relating to Act No. 236. Judge Young shall decide all matters pertaining to these cases, and pursuant to this assignment shall retain jurisdiction over these cases regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.



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Donald W. Beatty  
Chief Justice of South Carolina

Columbia, South Carolina  
May 17, 2023

# **EXHIBIT 2**

## Heather Putnam

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**From:** Andrew Lindemann <Andrew@ldlawsc.com>  
**Sent:** Monday, July 15, 2024 2:33 PM  
**To:** Grace Babcock; Bradley Farrar; Will Lewis  
**Cc:** Terry Richardson; Brady Thomas; Heather Putnam  
**Subject:** RE: Thompson v. Goings - Case # 2023-000442

**Caution:** This email originated outside of our organization. DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Grace, thanks for sending me the draft. I cannot agree or consent to the language used – the way you have characterized the issues on appeal. I am still in agreement however to ask the Supreme Court to assume jurisdiction of this appeal.

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**From:** Grace Babcock <grace@richardsonthomas.com>  
**Sent:** Monday, July 15, 2024 2:31 PM  
**To:** Bradley Farrar <BFarrar@aikencountysc.gov>; Will Lewis <will@richardsonthomas.com>; Andrew Lindemann <Andrew@ldlawsc.com>  
**Cc:** Terry Richardson <terry@richardsonthomas.com>; Brady Thomas <brady@richardsonthomas.com>; Heather Putnam <heather@richardsonthomas.com>  
**Subject:** RE: Thompson v. Goings - Case # 2023-000442

Andrew, any thoughts?  
Grace



### GRACE BABCOCK

RICHARDSON THOMAS, LLC  
1513 HAMPTON STREET  
COLUMBIA, SC 29201  
P: 803.281.8150 F: 803.632.8263

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**From:** Bradley Farrar <[BFarrar@aikencountysc.gov](mailto:BFarrar@aikencountysc.gov)>  
**Sent:** Wednesday, July 10, 2024 10:57 AM  
**To:** Grace Babcock <[grace@richardsonthomas.com](mailto:grace@richardsonthomas.com)>; Will Lewis <[will@richardsonthomas.com](mailto:will@richardsonthomas.com)>; Andrew Lindemann <[Andrew@ldlawsc.com](mailto:Andrew@ldlawsc.com)>  
**Cc:** Terry Richardson <[terry@richardsonthomas.com](mailto:terry@richardsonthomas.com)>; Brady Thomas <[brady@richardsonthomas.com](mailto:brady@richardsonthomas.com)>  
**Subject:** RE: Thompson v. Goings - Case # 2023-000442

**Caution:** This email originated outside of our organization. DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Grace,

Thanks.

No, Aiken County does not join the attached motion.

Bradley T. Farrar  
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**From:** Grace Babcock <[grace@richardsonthomas.com](mailto:grace@richardsonthomas.com)>  
**Sent:** Tuesday, July 9, 2024 5:59 PM  
**To:** Will Lewis <[will@richardsonthomas.com](mailto:will@richardsonthomas.com)>; Andrew Lindemann <[Andrew@ldlawsc.com](mailto:Andrew@ldlawsc.com)>; Bradley Farrar <[BFarrar@aikencountysc.gov](mailto:BFarrar@aikencountysc.gov)>  
**Cc:** Terry Richardson <[terry@richardsonthomas.com](mailto:terry@richardsonthomas.com)>; Brady Thomas <[brady@richardsonthomas.com](mailto:brady@richardsonthomas.com)>  
**Subject:** RE: Thompson v. Goings - Case # 2023-000442

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Andrew and Brad,

I hope y'all are well. Please see the attached Rule 204 motion to transfer to the Supreme Court which we intend to file this week. Please let me know if y'all have any changes or join this motion as is.

Thanks so much,

Grace



**GRACE BABCOCK**

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**From:** Grace Babcock  
**Sent:** Wednesday, June 12, 2024 2:10 PM  
**To:** Will Lewis <[will@richardsonthomas.com](mailto:will@richardsonthomas.com)>; Andrew Lindemann <[Andrew@ldlawsc.com](mailto:Andrew@ldlawsc.com)>  
**Cc:** Terry Richardson <[terry@richardsonthomas.com](mailto:terry@richardsonthomas.com)>; Brady Thomas <[brady@richardsonthomas.com](mailto:brady@richardsonthomas.com)>  
**Subject:** RE: Thompson v. Goings - Case # 2023-000442

Hi Andrew,

Circling back to this. I am sure you saw the Court of Appeals' correspondence / conflict letter sent out today. We will get to drafting a consent 204(b), SCACR motion unless you have already started it. Hope all is well.

Grace



**GRACE BABCOCK**

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**From:** Will Lewis <[will@richardsonthomas.com](mailto:will@richardsonthomas.com)>  
**Sent:** Saturday, November 11, 2023 10:56 AM  
**To:** Andrew Lindemann <[Andrew@ldlawsc.com](mailto:Andrew@ldlawsc.com)>  
**Cc:** Terry Richardson <[terry@richardsonthomas.com](mailto:terry@richardsonthomas.com)>; Brady Thomas <[brady@richardsonthomas.com](mailto:brady@richardsonthomas.com)>; Grace Babcock <[grace@richardsonthomas.com](mailto:grace@richardsonthomas.com)>  
**Subject:** RE: Thompson v. Goings - Case # 2023-000442

Andrew,

Following up on getting this transferred to Supremes. I know we all agreed to do it, and you wanted to wait until you had final briefs in. When do you want to file that request?

Will



**WILLIAM C. LEWIS**

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THE STATE OF SOUTH CAROLINA  
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APPEAL FROM AIKEN COUNTY  
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Treasurer of Aiken County, Aiken County Council, Aiken  
County, City of Aiken, Aiken Council, and Stuart  
Bedenbaugh, in his official capacity as City Manager of  
Aiken, Respondents.

PROOF OF SERVICE

I certify that I have served **Rule 204(b), SCACR, Petition to Transfer or Certify** on the Respondents via e-mail upon their respective attorneys of record as addressed below:

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Jason Goings, in his official capacity as  
Treasurer of Aiken County, Aiken County Council*

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Dated: September 16, 2024  
Columbia, SC